

# **SPECIAL EXCEPTION and SPECIAL EXCEPTION MODIFICATION PROCESS**

## **Montgomery County, Maryland**



Special Exceptions and Special Exception Modifications are subject to the same regulatory process that is described below. A minor change to an existing Special Exception is called an Administrative Modification and is considered by the Board of Appeals based on the process in Section 59-G-1.3(c)(1) of the *Zoning Ordinance*.

### **Application Process**

1. An application with supporting materials, such as a site plan and a statement of operations, is filed with the Board of Appeals.
2. The subject property is posted with a black and white sign that contains the case number and a phone number to call for information. The sign must be posted continuously throughout the case.
3. The Board of Appeals sends notice of the case to all confronting and abutting property owners. This letter is the only notice, and it is up to each individual to follow up.
4. A copy of the application and supporting materials are sent from the Board of Appeals to the Development Applications and Regulatory Coordination Division of the Planning Department.
5. A zoning analyst in the Development Applications and Regulatory Coordination Division is assigned to the case. In a Technical Staff Report, the zoning analyst analyzes and makes a recommendation about whether the application satisfies the *Zoning Ordinance* requirements, and recommends what conditions should be attached to the Special Exception or Modification.
6. The zoning analyst puts together the other elements of the Technical Staff Report, which are memoranda on the application from the appropriate Area Planning Division about the applicable Master Plan.
7. If comments and letters from the community are received by the zoning analyst at an appropriate time, those letters are attached to the Technical Staff Report.

## **Planning Board Hearing**

8. Most special exceptions, except cases such as accessory apartment special exceptions, are reviewed by the Planning Board. In those cases, the Technical Staff Report appears on the Planning Board website, [http://www.montgomeryplanningboard.org/meetings\\_archive/](http://www.montgomeryplanningboard.org/meetings_archive/), approximately 10 days prior to the Planning Board's public hearing.
9. The Planning Board holds a public hearing on the application; this is usually on a Thursday.
10. The Planning Board public hearing is a timed hearing that takes place in the following order:
  - a. The zoning analyst goes first and explains the Technical Staff Report.
  - b. The applicant goes next, has 15 minutes to present its case, and may reserve time for rebuttal after community representatives.
  - c. Government officials have 7 minutes.
  - d. The community goes next. Citizen associations have 10 minutes. An abutting neighbor has 5 minutes. Any other individual has 3 minutes.
11. After the presentations, the Planning Board may ask questions, and then the members discuss the application and vote.
12. The Planning Board's recommendation and the Technical Staff Report are forwarded in writing to the Office of Zoning and Administrative Hearings (OZAH).

## **Hearing by Office of Zoning and Administrative Hearings**

13. OZAH assigns a Hearing Examiner to conduct the second required public hearing.
14. The Hearing Examiner's public hearing has no time limits, witnesses are sworn in, there is cross-examination after each witness testifies, and a complete transcript is made.
  - a. The applicant puts on its case first through exhibits and testimony.
  - b. Any other parties, whether in support or in opposition, then present their case(s).
  - c. The applicant has the right to put on rebuttal witnesses and enter exhibits.
  - d. The record includes hearing testimony and all exhibits submitted to the Hearing Examiner. Testimony and exhibits presented to the Planning Board are not part of the record or considered by the Hearing Examiner and the Board of Appeals unless they are submitted before or during the Hearing Examiner's hearing.
15. After the close of the record, the Hearing Examiner has 30 days in which to submit a Report and Recommendation to the Board of Appeals.

## Board of Appeals Decision

16. Any party of record may request oral argument in front of the Board of Appeals based on the Hearing Examiner's Report, which the Board in its discretion may grant or deny.
17. The Board of Appeals discusses the Hearing Examiner's Report during a public worksession on a Wednesday and votes on whether to grant the application with conditions, deny it, or to seek additional information from the Hearing Examiner.
18. Any aggrieved party may ask the Board of Appeals to reconsider its decision or appeal to the Circuit Court of Montgomery County within 30 days after the Board's written resolution in the case.

### Special Exception Process

